

RESPONSE

Reconsideration is requested. Claims 1-10 are pending. Responsive to the Office Action of December 9, 2003, the Examiner's comments and the cited art have been noted and studied. For reasons to be set forth in detail below, it is respectfully submitted that the present application is in condition for allowance, and such action is requested.

35 U.S.C. §102 Rejections:

The subject matter of claims 1-5 was rejected under 35 U.S.C. §102(b) as anticipated Naka et al., EP 803,288 (hereinafter "Naka et al.").

Naka et al., as understood, describes a device for analyzing a sample that includes a suction pressure generating means, a drawing channel, an analytical section and a bypass channel (see, for example, col. 3, lines 9-23 of Naka et al.). The device described in Naka et al. is configured such that a liquid flow resistance (X) in a portion of the drawing channel, a liquid flow resistance (Y) in the bypass channel and a liquid flow resistance in (Z) in another portion of the drawing channel has the relationship of $X > Y > Z$ (see, for example col. 3, lines 23-31 and col. 4, lines 24-29 of Naka et al.).

Naka et al. teaches that the liquid flow resistances (i.e., X, Y and Z) can be controlled by configuring the portions of the drawing channels and the bypass channel such that they are of different diameters and lengths (see, for example, col. 14, lines 47-55; col. 15, lines 13-27 and col. 17, lines 22-32 of Naka et al.). In particular, Naka et al. teaches that a portion of the bypass channel (element 6a in FIGs. 3, 4 and 5A-5D of Naka et al.) extending from a branching point with the drawing channel (see col. 14, lines 49-55 of Naka et al) should have a relatively small diameter.

Independent claim 1 of the present application recites a medical diagnostic device with first and second stop junctions wherein:

... the second stop junction is weaker than the first stop junction such that the excess sample passes through the second stop junction into the overflow region only after sample has filled the measurement area. (emphasis added)

Serial No. 09/541,376

While Naka et al. describes a device that the Office Action considers to include an angled stop junction (see page 2, lines 19-21 of the Office Action), Naka et al. does not describe, teach or suggest that such a stop junction can be combined with another stop junction in a manner that renders the stop junction "weaker" in comparison to the other stop junction and, thereby, provides for an overflow region to be filled only after a measurement area is filled. In contrast, as discussed above, Naka et al. teaches that a bypass channel and portions of a drawing channel should themselves be configured of **different diameters and lengths** in order to provide liquid flow resistances with a predetermined relationship. Therefore, Naka et al. simply does not appear to describe, teach or suggest the use of two stop junctions, one weaker than the other, as recited in claim 1.

For at least the foregoing reason, Applicant submits that independent claim 1 is novel, not obvious and, therefore, allowable over Naka et al.. Since dependent claims necessarily contain the limitations of their parents, dependent claims 2-5 are allowable for at least the same reason.

35 U.S.C. §103 Rejections:

The subject matter of claims dependent 6-10 was rejected under 35 U.S.C. §103(a) as obvious over Naka et al. (EP 803,288) in view of Shartle et al., EP 974,840 (hereinafter "Shartle et al."). Shartle et al. appears to describe a fluidic diagnostic device that includes a sample port, measurement area, channel, bladder, stop junction and a bypass channel (see col. 6, line 43 through col. 7, line 18; col. 9, lines 26-33 and FIGs. 1 and 6A-6D of Shartle et al.).

Shartle et al., as understood, does not cure the deficiency of Naka et al. discussed above with respect to independent claim 1. Therefore, since dependent claims necessarily contain the limitations of their parents, dependent claims 6-10 are allowable for at least the same reason as discussed above with respect to claim 1.

CONCLUSION

Applicant respectfully requests that, in light of the amendments and explanations above, the Examiner reconsider and withdraw his rejections. Applicant respectfully submits that the claims are in condition for allowance. In the event that minor claim amendments are necessary to meet formal requirements, Applicant invites the Examiner to telephone the undersigned at (408) 956-4790 so that issuance can be expedited.

Respectfully submitted,

By:  4/9/03

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